



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 1**  
**5 Post Office Square, Suite 100**  
**Boston, MA 02109-3912**

October 8, 2019

Via email: [msnell@nutter.com](mailto:msnell@nutter.com) and First-Class Mail

Matthew Snell, Esq.  
Nutter, McClennen & Fish, LLP  
155 Seaport Boulevard  
Boston, MA 02210

RE: Aerovox Facility TSCA Determination dated December 24, 2009

Dear Mr. Snell:

EPA is pleased that the pilot studies for the 21E cleanup underway at the Aerovox facility located at 740 Belleville Avenue, New Bedford, Massachusetts, are now moving forward at the Site. This letter is to advise you of AVX's continued obligation to coordinate with EPA to assure compliance with Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, and its implementing regulations at 40 C.F.R. Part 761 (TSCA).

As you may know, EPA has discussed its concerns about AVX's compliance with TSCA regulations at the Aerovox facility at various meetings, during telephone conversations, and in emails and letters between EPA and AVX, and its representatives. More specifically, EPA believes that the risk-based TSCA Determination dated December 24, 2009, issued pursuant to TSCA § 761.61(c), which is Appendix C to EPA's June 2010 Action Memorandum for the Aerovox Non-Time Critical Removal Action ("the TSCA Determination"), requires modification or possibly reissuance given the existence of new conditions and new information discovered at the facility during the 21E cleanup, including the discovery of DNAPL and the offsite migration of PCB-contaminated groundwater. (Please refer to correspondence between EPA and AVX, and its representatives, beginning in late August 2016 to the present time.)

In addition, EPA has reviewed MassDEP's July 26, 2019, Conditional Approval of Revised Phase III Remedial Action Plan and the 2019 Phase III Addendum for the Former Aerovox Facility (RTN 4-00000601) ("MassDEP's Conditional Phase III Approval") and notes the use of a treatment wall, ISCO treatment, and excavation and onsite consolidation of PCB-contaminated soil from the Aerovox facility and from the adjacent Titleist facility. These remedial elements were not envisioned in the 2009 TSCA Determination and is further reason for EPA's position that a modification or possible reissuance is required to support the now defined remedy. EPA has made

MassDEP aware of its concerns about AVX's compliance with TSCA requirements during the ongoing 21E cleanup.

If AVX fails to seek a modified TSCA approval, EPA would have grounds for withdrawing the 2009 TSCA Determination based on the changed conditions noted above.<sup>1</sup> If AVX proceeds with implementing the full remedy described in MassDEP's Conditional Phase III Approval without a modified TSCA approval (or a new TSCA Determination), AVX would not be in compliance with the TSCA disposal regulations in 40 C.F.R. Part 761 Subpart D.

As previously discussed, in order for EPA to consider a modification to the TSCA Determination or to issue a new TSCA Determination, it must be able to conclude that the proposed remediation actions do not or will not present an unreasonable risk of injury to health or the environment. Thus, if AVX would like to proceed under § 761.61(c) to achieve compliance with TSCA at the Aerovox facility, please submit the information below to Kim Tisa, EPA's PCB Coordinator at [tisa.kimberly@epa.gov](mailto:tisa.kimberly@epa.gov) as it becomes available:

- Results of the PRB pilot study;
- Results of the ISCO pilot study;
- Sampling and analysis results and reports from the PDI studies;
- Workplans for PCB removal, storage, consolidation, sampling, and disposal (this information may be included in the MCP Phase IV submission);
- Long-term monitoring and maintenance for institutional controls; and
- Other relevant technical documents such as maps, graphs, etc., as necessary.

This remediation is proceeding under the MassDEP's 21E cleanup program and is subject to the timelines in the 2010 Administrative Consent Order, as amended, between the Commonwealth and AVX. Accordingly, if this information, as it is developed, is provided to Kim Tisa in a timely manner, she will be available to discuss matters concerning TSCA compliance consistent with those timelines. Once EPA receives and reviews final versions of this information, we anticipate we will be in a position to issue either a modified TSCA Determination (or a new TSCA approval) for the Aerovox facility.

With this letter EPA also is notifying AVX, and by separate letter Precix and Titleist, that separate TSCA determinations under 40 C.F.R. § 761.61(a) and/or (c) may be needed for those site investigations and potential cleanups underway under the MassDEP 21E program unless TSCA-regulated PCBs at those sites are removed and disposed of in accordance with 40 C.F.R. § 761.61(b).

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<sup>1</sup> Please note that if AVX seeks a modification to the existing TSCA Determination, EPA may determine that a new TSCA Determination rather than a modification may be necessary.

EPA invites and encourages AVX to contact EPA to discuss steps AVX can take to avoid non-compliance with TSCA at the Aerovox facility. Please provide a response within 30 days of the date of this letter with a proposal that will address EPA's concerns. For questions concerning TSCA compliance, you can reach Kim Tisa at (617) 918-1527 or [tisa.kimberly@epa.gov](mailto:tisa.kimberly@epa.gov); legal questions should be directed to Cynthia Catri at (617) 918-1888 or [catri.cynthia@epa.gov](mailto:catri.cynthia@epa.gov)

Very truly yours,



Nancy Barmakian, Acting Director  
Land, Chemicals and Redevelopment Division

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